

APPEAL NO. 023140
FILED FEBRUARY 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 14, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second compensable quarters. The claimant appeals the determinations on sufficiency of the evidence grounds. There is no response from the carrier in the file.

DECISION

Affirmed.

We first address the fact that the claimant has attached various documents to his appeal, a few of which are contained in the hearing record. However, many documents, including some records from Dr. M, some radiology results, and some records from Dr. Z, and a letter from the Texas Rehabilitation Commission dated June 21, 2002, are offered for the first time on appeal. In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we generally only consider evidence that was submitted into the record at the hearing. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the aforementioned documents that the claimant attached to his request for review and will not consider them on appeal.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the first and second quarters. Under the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The claimant attempted to establish his entitlement to SIBs for the first quarter by establishing that he had no ability to work during the qualifying period. He attempted to prove that for the second quarter he had only a minimal ability to work for the latter part of the qualifying period, and that he conducted a job search during that portion of the qualifying period that he "learned" he was released to light duty by his treating doctor. The hearing officer determined that the claimant did not sustain his burden of proving no ability to work under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4). Specifically, he determined that there were "other records," specifically a functional capacity evaluation dated March 6, 2001, showing that the claimant had some ability to work during the qualifying periods for both quarters. The hearing officer was acting within his province as the fact finder in resolving the conflicting evidence against the

claimant and nothing in our review of the record demonstrates that the hearing officer's determination that the claimant had some ability to work during both of the qualifying periods is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. The claimant acknowledged that he did not conduct a job search at all in the first quarter qualifying period, and only for the latter seven weeks in the second quarter qualifying period. If the claimant has some ability to work, he is required to show that he looked for work at least once during each and every week of the qualifying period, as is required to establish a good faith job search under Rule 130.102(e).

Accordingly, no sound basis exists for us to reverse the hearing officer's determination that the claimant is not entitled to SIBs for the first or second quarters. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The claimant attempted to establish his entitlement to first and second quarter SIBs under a hybrid no-ability-to-work/some-ability theory. Again, the hearing officer determined that the claimant's evidence was insufficient to establish total inability to work under the requirements of Rule 130.102(d)(4) because there was an "other record" showing that he had some ability to work. The hearing officer's determinations in that regard are not so contrary to the great weight of the evidence as to compel their reversal on appeal. *Id.*

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Terri Kay Oliver
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge